

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
HOME MEDICAL PRODUCTS & SERVICES,	:	LS0902045PHM
RESPONDENT.	:	

Division of Enforcement Case # 08 PHM 029

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Home Medical Products & Services
300 Villa Drive
Hurley, WI 54534

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Pharmacy Examining Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Pharmacy Examining Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Home Medical Products & Services is duly licensed as a wholesale distributor of prescription drugs in Wisconsin (license # 45-760). This license was first granted on November 7, 1995.
2. Respondent's most recent address on file with the Wisconsin Pharmacy Examining Board is 300 Villa Drive, Hurley, Wisconsin, 54534.
3. The Department of Regulation and Licensing conducted an unannounced inspection on May 8, 2008. Home Medical Products & Services was found to be doing business in a building that did not have an alarm system as required by Wis. Admin. Code § Phar 13.10(4).
4. Home Medical Products & Services was not able to produce an outdated drugs policy as required by Wis. Admin. Code § Phar 13.15(4).

CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. §450.10, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. The conduct described in paragraphs 3-4 above constitutes a violation of Wisconsin Administrative Code § Phar 13.10(4), Phar 13.15(4) and Wis. Stat. § 450.10(1)(a)2 and 6 and subjects Respondent to discipline pursuant to Wis. Stat. § 450.10(1)(b)1.

ORDER

IT IS ORDERED:

1. Home Medical Products & Services is REPRIMANDED.

2. Respondent shall, within ninety (90) days from the date of this Order, pay a FORFEITURE in the amount of One Thousand, Five Hundred Dollars (\$1,500.00).

3. Respondent shall, within ninety (90) days from the date of this Order, pay costs of this proceeding in the amount of One Hundred Dollars (\$100.00). Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

4. In the event Respondent fails to pay the forfeiture as ordered, or in the event it fails to pay costs as ordered, Respondent's license (#45-760) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

5. This Order is effective on the date of its signing.

Dated this 4th day of February, 2009.

PHARMACY EXAMINING BOARD

By: Gregory C. Weber
A Member of the Board

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
HOME MEDICAL PRODUCTS & SERVICES	:	LS# _____
RESPONDENT.	:	

Division of Enforcement Case # 08 PHM 029

Respondent Home Medical Products & Services, by its CEO, Larry Kutz; and Jeanette Lytle, attorney for the Department of Regulation and Licensing, Division of Enforcement, stipulate:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement (case # 08 PHM 029). Larry Kutz represents, by his signature below, that he has authority to enter into this agreement on behalf of Respondent. Mr. Kutz, on behalf of Respondent, consents to the resolution of this investigation by stipulation.
2. Mr. Kutz understands that by signing this Stipulation he voluntarily and knowingly waives on behalf of Respondent its rights, including: the right to a hearing on the allegations against it, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine witnesses; the right to call witnesses and to compel their attendance by subpoena; the right to testify; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to it under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.
3. Respondent has been provided an opportunity to obtain the advice of legal counsel prior to signing this stipulation.
4. Larry Kutz agrees, on behalf of Respondent, to the adoption of the attached Final Decision and Order by the Pharmacy Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Pharmacy Examining Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or its attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
7. Respondent is informed that should the Board adopt this Stipulation, the Board's final decision and order is a public record and will be published in accordance with standard Department procedure.
8. The Division of Enforcement joins Larry Kutz in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Home Medical Products & Services

By: _____
Larry Kutz, CEO
300 Villa Drive
Hurley, WI 54534

Date

Jeanette Lytle
Attorney
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date